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AUTHOR Mader, Thomas F.; Mader, Diane C.
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ABSTRACT

Addressing two recurrent concerns in educational debate--how a discipline can contribute to students' analytical and critical thinking, and how to improve students' ability to express themselves orally and in writing--the Language of Critical Thinking course is designed to strengthen critical thinking skills by using a legal case study approach. This method allows students to concentrate on the analysis of issues, on the development, evaluation, and organization of arguments, and on perfecting a clear and effective style. Based on Robert Ennis' definition of critical thinking as "reasonable reflective thinking that is focused on deciding what to believe or do," this course identifies the basic areas of critical thinking ability as clarity, basis, inference, and action. The course begins with a series of logical exercises which lead to conclusions requiring demonstration rather than argument. After these exercises students are given cases for analysis, in which they analyze a situation and seek alternatives; these are followed by cases for advocacy, in which students must take a side. The course aims to help students learn that the audience's acceptance of an argument's premises is the most important criterion for the effectiveness of argument, and that orderliness makes comprehension possible. (Seventeen footnotes are included in the text, and eight logical exercises are appended.) (MM)

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THE LANGUAGE OF CRITICAL THINKING LOGICAL EXERCISES AND LEGAL CASES FOR USE IN THE SPEECH COMMUNICATION CLASSROOM

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THOMAS F. MADER, Hunter College/CUNY

DIANE C. MADER, Nassau Community College

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THE LANGUAGE OF CRITICAL THINKING LOGICAL EXERCISES AND LEGAL CASES FOR USE IN THE SPEECH COMMUNICATION CLASSROOM

This paper addresses two of the recurrent and insistent concerns in contemporary educational debate: How can a discipline contribute to students' ability in analytical and critical thinking and to their ability to express themselves orally and in writing? A variety of reports by the Association of American Colleges (Integrity in the College Curriculum: A Report to the Academic Community, 1985), the National Endowment for the Humanities (To Reclaim a Legacy: A Report on the Humanities in Higher Education, 1984), and the National Institute of Education (Involvement in Learning: Realizing the Potential of American Higher Education, 1985) have stressed the importance of the development of modes of inquiry, abstract thinking, and critical analysis as well as literacy (writing, reading, speaking, and listening).

In 1980, recognizing the importance of critical thinking, the State of California mandated instruction in critical thinking. It stated:

> Instruction in critical thinking is to be designed to achieve an understanding of the relationship of language to logic, which should lead to the ability to analyze, criticize, and advocate ideas, to reason inductively and deductively, and to reach factual or judgmental conclusions based on sound inferences drawn from unambiguous statements of knowledge or belief. The minimal competence to be

> expected at the successful conclusion of instruction in critical thinking should be the ability to distinguish fact from judgment, belief from knowledge, and skills in elementary inductive and deductive processes, including an understanding of the formal and informal fallacies of language and thought. (Letter from Harry Harmon, Executive Vice Chancellor of the California State University and Colleges to College Presidents, October 29, 1980)

This paper explores how a course in Speech Communication can contribute to developing these competencies.

There has been an implicit assumption in our teaching that students learn to think critically as they move through increasingly complex levels of a discipline's content and information. Typically, we lecture, present theory, test for recall, and then demand that students use critical skills in a research paper or term project. However, it may be presumptuous to assume that critical thinking develops without explicit and conscious instruction. Alfred North Whitehead said, "The misconception that has haunted us down to the present time is that these criteria are easy to apply." The Function of Reason, Boston: Beacon Press, 1971, 68.)

Before proceeding to the "how" of strengthening skills in critical thinking, we need to offer a definition of critical thinking. There are almost as many definitions as there are sources, but most definitions focus on informal and formal logic or on general problem-solving skills. (Chet Meyers, Teaching Students to Think Critically, San Francisco: Jossey-Bass Publishers, 1986, 3)

DEFINTIIONS OF CRITICAL THINKING

1. Johnson and Blair (R. H. and J.A., Logical Self-Defense, McGraw-Hill Ryerson Limited, 1983, xiv) claim that critical thinking is developed through appraising and analyzing real-life arguments in natural language. The goal is to have students able to distinguish good arguments from bad. This requires that students be able to identify such fallacies as irrelevant reason, hasty conclusion, problematic premise, diversion, impersonation, language imprecision, and intimidation. (For a similar treatment, see also S. Morris Engel, With Good Reason, New York: St. Martin's Press, 1986 and Howard Kahane, Logic and Contemporary Rhetoric, 2nd ed. Belmont, Ca.: Wadsworth Publishing Company, Inc. 1976)

2. Similarly, Stephen Toulmin (The Uses of Argument, London: Cambridge University Press, 1958) suggests the rational assessment of argument in terms of six criteria. These criteria for assessing arguments are: 1) Claim: A thesis or conclusion whose merits one seeks to establish is identified; 2) Grounds: Data, evidence, reasons, or support that one appeals to as a foundation for the claim; 3) Warrant: The basis on which one justifies using the data to prove one's claim; it permits the leap from grounds to claim; 4) Backing: Support for the warrant; 5) Qualifier: Any limitation or restriction that is made part of the claim 6): Reservation: A statement of conditions under which the claim will not operate.

An argument constructed with these components would look

like this:

Claim:	Tom is a citizen of the United States.
Grounds:	He was born in Brooklyn, New York.
Warrant:	Any person born in a state of the United States automatically becomes a United States citizen.
Backing:	The United States Constitution states that anyone born on United States soil is a United States citizen.
Qualifier:	Probably.
Reservations:	Unless he served in the army of another nation, or he became a citizen of Singapore, or his parents were British and he holds dual citizenship.

The logic-and-fallacies approaches to critical thinking primarily evaluate arguments but do not enable students to identify and formulate issues and problems, seek and evaluate alternative choices, and construct arguments in which they draw reasonable conclusions from information and defend these conclusions rationally.

3. Critical thinking as problem solving breaks down a complex activity into smaller units in order to understand it. The steps are: a) identify or define the problem; b) analyze the problem; c) form tentative solutions; d) choose the best solution; and 5) test the solution. (John Dewey, How We Think, Boston: D. C. Heath and Company, 1933; W. E. Moore, H. McCann, and J. McCann, Creative and Critical Thinking, Boston: Houghton Mifflin, 1985.)

However, limiting critical thinking to problem solving assumes that critical thinking always begins with a problem and

that it is impossible to raise questions and critique solutions without necessarily presenting alternatives. This is not always the case. For example, commentators evaluating the soundness of a politican's program are not seeking solutions to problems; their analysis provides readers with information or guidelines for voting. However, the analyst's assessment itself is an exercise in critical thinking. Similarly, researchers who seek to learn which nonverbal behaviors are the most signifant cues to deception are not engaged in "problem solving." Yet, they undoubtedly propose hypotheses, evaluate evidence, suspend judgment, seek alternative explanations, and abstract from their discoveries. In short, they think critically.

4. Katula and Martin offer another approach to critical thinking. (Richard A. and Celeste A., "Teaching Critical Thinking in the Speech Communication Classroom," Communication Education, 33 (1984): 160-167.) They adapt D'Angelo's "logical topics" pattern (Frank, A Conceptual Theory of Rhetoric, Cambridge: Winthrop Publishers, 1975, Chapter 4) of critical thinking and describe patterns people use to order their thoughts and to probe subjects and issues. These patterns are description, definition, division into parts (analysis), classification, exemplification, comparision, narration, process, cause and effect, syllogistic progression, iteration, negation, and alternation. For Katula and Martin, critical thinking does not mean teaching students how to think, but in making them aware of

fundamental, universal patterns that allow people to investigate subjects and organize thinking.

These conceptual forms yield probes or questions with which to analyze any subject. These would include questions such as: 1) What happened? (narration), 2) How does it work? (process), 3) Why did it happen? (cause and effect) 4) What are the parts? (analysis), 5) Is it similar to other things (comparision), 6) What categories does it fall into? (classification), 7) What are the physical features? (description), 8) To what class of things does it belong? (definition), and 9) What are reasonable illustrations of this idea or principle? (exemplification).

It seems to us that these probes are a useful beginning for investigating a topic. They serve the inquiry process well and are useful for the construction of arguments. However, critical thinking goes beyond this. Two of its most important functions are a recognition of how language influences argument and the ability to distinguish statements of fact, judgment, and inference.

5. In a paper which attempts to organize and synthesize approaches to critical thinking and to specify its content, Robert Ennis defines critical thinking as "reasonable reflective thinking that is focused on deciding what to believe or do.... The basic areas of critical thinking ability are clarity, basis, inference, and action." ("A Taxonomy of Critical Thinking Dispositions and Abilities," in Teaching Thinking Skills: Theory and Practice, J. B. Baron and R. J. Sternberg, eds., New York:

W. H. Freeman and Company, 1987, 10-18.)

Clarity means: a) defining a problem, hypothesis, or thesis; 2) identifying conclusions, the reasons offered for those conclusions, and the criteria to evaluate the arguments; and 3) asking appropriate questions.

Basis involves the evaluation of the credibility of sources of evidence and of observations made. Inference includes the ability to make generalizations and deductions and evaluations of them, making value judgments, defining terms, identifying assumptions, and deciding on action (problem solving). Finally, interaction refers to being able clearly to present substantiated inferences in discussion and debate.

In the remainder of this paper, we will explain what we do to implement this approach and to incorporate those elements of the other definitions which supplement it.

THE LANGUAGE OF CRITICAL THINKING

The Language of Critical Thinking is a forty-five-hour one-semester course carrying three credits, and it is open to sophomores and above. The course uses a legal case study approach which allows students to concentrate on the analysis of issues (here, rules of law); on the development, evaluation, and organization of arguments; and on perfecting a clear and effective style. The first half of the course focuses on definition and analysis, the second half on advocacy. There are six to ten graded written assignments (no more than three typewritten

pages; average paper runs about two pages), opportunities for re-writing papers, and no written examinations. There are also in-class ungraded writing assignments that are read aloud and discussed; each assignment has a specific focus, such as definition of terms, identification of issues, and so on.

Borrowing from Toulmin, all assignments pose three questions: (a) What are you saying? (claim); (b) What do you have to go on? (data); (c) How do you get from data to claim? (warrant). Students may say whatever they want, provided they can support what they say.

What is innovative about the course? Probably its traditional rhetorical foundation, one that suggests that the premises for any argument must be audience-centered, grounded in what the audience will accept as contradistinct from what is true. Acceptability rather than truth as the criterion for an argument's effectiveness does not really solve any problems but merely points to how complicated the problem is. When premises are both acceptable and true, the arguer has no problem. When premises are true but not acceptable, the arguer must decide whether to reject the argument or to find ways of making the truth acceptable. When premises are not true but acceptable, the arguer must decide whether to reject the argument on ethical grounds or to reject ethics. The alternatives may seem to be abruptly stated; however, the discussions on these alternatives are rather extensive.

The student's own experience and his/her intuition are used

as starting points for what is generally acceptable. Lines of arguments, in other words, deal in probabilities, the character of the audience, and what the audience generally understands to be reasonable motivations for various kinds of behavior. In fact, reasonableness, rather than rationality, is the standard for structuring arguments. We owe the distinction between reasonableness and rationality to Stephen Toulmin's Reason in Ethics. (London: Cambridge University Press, 1950.) Rationality implies that there are logical formulas that allow one to move from problem to solution. Reasonableness implies that if problem-solving formulas exist, they are subject to variables such as the attitudes, values, and beliefs of those people employing such formulas.

The course begins with a series of logical exercises. The first four exercises (labelled A, B, C, D) lead to necessary conclusions, conclusions that require demonstration rather than argument. In each exercise there are a number of givens, and the givens determine how the conclusions must be reached. There is no room for opinion or personal experience. There is only one correct answer and students either understand how that answer was arrived at or they must be instructed how to get from the givens to the conclusion. If they understand the conclusion (and most of them eventually do), their responsibility is to explain clearly how the conclusion is arrived at.

For example, in the Alfred-Bruce-Charles exercise (labelled

A), students must realize that (1) There is only one answer Bruce can give to Alfred (Bruce must say he is a brave man whether he is telling the truth or lying) (2) Alfred's reporting what Bruce must say means that Alfred is telling the truth and is therefore a brave man ("Bruce says he is a brave man.") (3) Alfred's additional comment to Charles ("And he [Bruce] is [a brave man].") must be true because we have already established that Alfred is a brave man and must tell the truth. Therefore, it folows that Bruce must also tell the truth and must, by definition, be a brave man (4) Charles says that Bruce is a coward and we know this is a lie. Therefore, Charles must be a coward. Having to organize their thoughts on paper and present them in an organized and coherent way, forces students into thinking more clearly. To find an answer, they must first discover and test alternatives.

The fifth exercise (labelled E) differs from the first four exercises in being grounded in mathematical probability instead of formal certainty. Here we talk about the meaning of formal certainty, mathematical probability, and possibility, and indicate that decision-making starts with mathematical probability. Usually there are a few students who eventually arrive at the "correct" answer for this exercise and, if we are lucky, all the students will come to appreciate why common sense dictates this one answer.

The sixth exercise (labelled F) focuses on human probability. The class is divided into pairs, and each pair

sits back-to-back. The object of the exercise is to have the partners figure out how they will come up with the same answer even though they are not permitted to talk to each other about their answers. The procedure is as follows. Everyone is instructed to choose an answer for each item in turn. After a choice has been made on the first item, partners are instructed to reveal their choices to one another. They are then told to make a choice for the second item, after which partners report to each other what choices they have made. Students eventually realize that they must develop a simple pattern of response that allows partners to predict what each other is going to do. For example, the first three items require each student to choose among a number of possibilities; the simplest pattern would be to choose the first answer in each case.

With the human probability exercise we move into the circle of argument; unlike the previous exercises, this exercise requires students to justify conclusions rather than explain them. In doing so, students need to consider what will "make sense" to their audience (especially their partners). It usually turns out that a number of students did not take their partners into consideration when they devised their pattern of response, or they decided that all patterns of response would be haphazard. These students never score well on the exercise. Students who do well on the exercise invariably stress trying to figure out how to communicate to their partners in the simplest

way possible.

After this series of exercises, students are given their first legal case (See "Charlie, Jack, and Fred," G1 and G2). We try to make these points with the first case:

(1) Students must priortize the information in the case. What is essential and what is not?

(2) Students must examine the criteria for battery and show whether or not the facts indicate that the criteria were met. They must be able to separate fact from opinion concerning the behaviors.

(3) Students must show that they know how to use the facts instead of merely summarizing the facts. They must use evidence to support their conclusions.

(3) Students must show that they are analyzing the case rather than advocating a side; in other words, their power to discern and formulate the issues is more important than their disposition to select a side.

"Cases for Analysis" are intended to get the student to size up a situation and to seek alternatives rather than grind an axe. What are the strengths and weaknesses on either side? What possible arguments could either side offer? What is the strongest case that can be made on either side? If students learn to analyze a situation by searching for and testing alternatives, they should come to understand both sides of a controversy. They discover the importance of suspending judgment for a time. And when they decide to advocate one side of that controversy, they should have a much better understanding of what they are talking about.

"Cases for advocacy," which come next, do ask students to take a side. However, students are told that the most effective

kind of advocacy stems from an ability to analyze the situation, from a capacity to examine both sides of a controversy. In addition, advocacy requires the ability to analyze an audience, and such analysis presupposes that one respects the audience, their willingness to choose the right course of action, and to do so guided by reasonableness. It is here that we especially emphasize the importance of common sense and personal experience. How do people account for human behavior in a given situation? Class discussions indicate that our interpretations of how people deal with one another are very often similar. If this is so, then such interpretations can be useful in fashioning arguments.

Here is an example of what we mean. In the Koppell vs. Mail Institute case (Labelled H), there are three persons mentioned: Ms. Koppell, her physician, and the salesman. Students read the case, and we then ask questions like these: What is Ms. Koppell's first name? (Edna, Ethel, Alice, and Beatrice score high.) How old is she? (40 to 45 is the usual response.) What is the color of her hair? (Mousy brown, followed by gray-brown, followed by brown.) What grade does she teach? Do students like her? What are her hobbies? What is her physician's first name? His last name? How old is he? (Invariably, older than Ms. Koppell.) Does he have a family? What is the salesman's first name? His last name? How old is he? (Usually younger than Ms. Koppell.) Is he a college graduate? (usual response: He spent some time in college but did not graduate.)

What is the color of his hair? What kind of build does he have? (Usual response: stocky.) Is he shorter or taller than Ms. Koppell? (Usual response: taller.) Is he married? (Yes--or was.) If so, how many children does he have? (Average: four.) What is his nationality? (Jewish, Italian, or Irish; seldom a WASP; never a Black.) Does he drink? (Yes.) If so, beer or scotch? (Beer.)

Students come to realize from the Koppell case that they form conceptions of people on minimal information and that they do form a consensus as to what is going on in a given situation (in the Koppell case: tricky salesman meets sneaky teacher). Whether these conceptions and consensuses conform to reality is not relevant. What is relevant is that our grasp on reality is limited to and fashioned by what facts we have together with what our experiences and intuitions tell us about those facts.

The next step is to assign students to defend either Ms. Koppell or the Mail Institute. Their usual strategy is to engage in partisanship that is one-sided and unfair. The salesman coerced Ms. Koppell into signing the contract, say those who defend Ms. Koppell. Ms.Koppell signed a contract, so she must pay for the course, say those who defend the Mail Institute. It becomes apparent that "coercion" and "contract," however defined, must be applied in the given situation. In short, definition first, then interpretation. And basic to both definition and interpretation is the student's ability to demon-

strate a sense of balance, a reasonableness, a capacity to see the conflict as being more complicated than an either-or argument. Moreover, as students experience the viewpoints of others, their own views become shaken. This resulting disequilibrium should provoke curiosity and inquiry as they challenge ideas and are challenged. Thus, they are led to draw new and independent conclusions.

We are trying to get students to make fine distinctions without being picky or sophistic; this is where the student's sense of balance, his/her sense of fairness and justice, becomes important. In the pursuit of fine distinctions, the student discovers the need for orderliness, without our having to mention outlining and organization. If the course works, students learn that the audience's acceptance of the premises of an argument is the most important criterion for the effectiveness of argument and that orderliness makes comprehension possible.

The final step is to get students to appreciate that acceptability and comprehensibility must be tied in with interest. The student must define, must interpret, and must dramatize. Arguments in themselves are sterile unless their relevance to human behavior is established. Therefore, we need to consider questions such as those that follow: What goes on when two people confront each other? What thoughts go through their minds and how do they behave with each other? How does Ms. Koppell, for example, talk to the salesman and how does she talk to her physician?

To answer these questions, we use brainstorming and role-playing, first in trying to develop a case for Ms. Koppell and then in trying to develop a case against Ms. Koppell. Students formulate the probes or questions that are necessary for a thorough analysis of the case. In regard to brainstorming, students are asked to suggest what Ms. Koppell said to her physician, and to the salesman, and how they interacted with her. Of course, the conversations will differ, depending upon whether a case is being made for or against Ms. Koppell. This brainstorming leads students to create the argument that Ms. Koppell's call to her physician was motivated by her desire to get out of the contract; the view is that there is nothing physically or emotionally wrong with her. And most students believe that the physician would lie about her state of health. While this is useful information, it does not justify the claim that "The physician lied." It does, however, direct students to speculate and consider what behaviors cited in the case would lead one to suspect that he lied.

After the brainstorming sessions, we ask a student to play the role of Ms. Koppell and another student the role of salesman. At various points, the rest of the class is asked to comment on the role-playing to determine whether it makes sense and seems genuine. In addition, we move students in and out of the role-playing exercise, so that a number of students have the opportunity to role-play. A similar exercise dealing with Ms.

Koppell and her physician follows.

The advantage of using role-playing is that it gives life to argument and helps students to see a number of possible interpretations for a given set of facts. In a way, the role-playing is another form of brainstorming, although somewhat more disciplined.

The Koppell case is the midpoint of the course; it is the first case that focuses on advocacy. Ideally, by the time students get to the Koppell case they will know what they are talking about (definition) and they will know how to explain what they know (analysis). Assuming that definition and analysis have become habits, students ought to be able to advocate a position effectively. Which means: They should be able to convince the audience that they are knowledgeable, logical, and fair. And this means that they convince their audience that they are in control of the situation.

In order to keep the focus of the course on reason and argument, students are not required to discover facts; they do no research. They are limited to what facts they are given, and these are the only facts they can deal with. They may make inferences based on these facts, provided they can justify such inferences. They are not permitted to fabricate information. They are taught (actually, we try to convince them) that the simplest hypothesis is the acceptable one (Occam's Razor), and that the simplest hypothesis accounts for what evidence is available.

This is not a course in remedial writing; at the same time, it is not a course for the select few. The Language of Critical Thinking is for students who are minimally competent in writing papers, who know they can write better and are not sure why they don't. "Writing better" usually comes down to an ability to get to the issue quickly, to think cogently, and to organize ideas and arguments effectively. This suggests that good writing is a consequence of clear thinking. However, most approaches to "clear thinking" tend to be negative, generally a listing of fallacies to avoid and an act of faith in the syllogism and its relevance to everyday problems. An ability to identify fallacies and a knowledge of the rules governing valid syllogisms do not help students write well. We see writing, not as the reduction of thought to paper or hard copy but as a way of enabling new knowledge by involving the active effort to state relationships. (See C. H. Knoblauch and Lil Brannon, "Writing as Learning Through the Curriculum," College English, 45 (1983):465-474.) The additional advantage of writing for students is that it permits repeated and extended recursive analysis.

What helps students improve their writing is careful attention to language, to what words mean. On the whole, students can use their common sense to determine the implications of a definition, once they understand the criteria for the definition. For example, "assault" as a legal term has a set of

criteria. If students understand the criteria, they have few problems in determining whether a specific action can be described as an "assault." All of this seems simple, or so we thought when we devised this course. It is simple, once people understand the significance of language.

APPENDIX

A.
(1) Brave men tell only truths.
(2) Cowards tell only lies.
(3) Alfred asks Bruce, "Are you a brave man or a coward?"
(4) Bruce answers Alfred, but Charles does not hear the answer.
(5) Alfred then turns to Charles and says, "Bruce says he is a brave man, and he is."
(6) Charles disagrees, "Bruce is not a brave man. He is a coward."
(7) How many brave men and how many cowards are present?

B.
(1) There are three musicians: a violinist, a cellist, and a pianist.
(2) Each is the father of one grown son.
(3) The son's names are Brown, Town, and Gown.
(4) The cellist and Town, Jr. are six feet tall.
(5) The pianist is five feet tall.
(6) Gown, Jr. is six inches shorter than Town, Jr.
(7) The violinist is five feet nine.
(8) The violinist has exactly one third as many cassettes as that man (among the other five) who is nearest his own height.
(9) The pianist's son has 313 orchestral cassettes and 409 vocal cassettes.
(10) Brown, Jr.'s father has more false teeth than the cellist.
(11) WHAT IS THE NAME OF THE VIOLINIST?

C.
(1) Mr. Buick, Mr. Chrysler, and Mr. Ford owned a Buick, a Chrysler, and a Ford (not necessarily in that order).
(2) Buick often borrowed the Ford.
(3) The Chrysler's owner often beat Ford at cards.
(4) Ford was the brother-in-law of the Buick's owner.
(5) Chrysler had more children than the Chrysler's owner.
(6) WHO OWNED THE BUICK?

EXPLANATION: We are told in items 3 and 4 that Ford did not own either the Chrysler or the Buick. Ford didn't own the Chrysler because the Chrysler's owner often beat Ford at cards (item 3). And

since Ford was the brother-in-law of the Buick's owner (item 4), Ford obviously didn't own the Buick. Ford, therefore, owned the Ford.

The second question is: Did Chrysler own the Buick, or did Buick own the Buick? In item 5 we are told that Chrysler had more children than the Chrysler's owner. This means that Chrysler didn't own the Chrysler. This means that Chrysler owned the Buick, since we already that he did not own the Ford (Ford owned it) and he didn't own the Chrysler.

D.

(1) Assume that there are at least 150 million living Americans.
(2) Assume also that every human being has less than a million hairs on his/ her head.
(3) Prove that at least 150 living Americans have exactly the same number of hairs on their heads.

EXPLANATION: Since every human being has less than a million hairs on his head, this means that any one individual could have anywhere from no hairs on his head (he could be bald) to 999,999 hairs on his head. Therefore, there are a million possible variations. If these million possible variations are evenly distributed among 150 million people, each variation (from being bald to having 999,999) hairs, there would be 150 people who would fit into each of the million categories.

If there is not this even distribution among the population, any decrease in any one of the million categories must mean an increase in another category. For example, if it turns out that a bald man finally grows a hair on his head, he moves from the bald category, which now would have 149 members, to the one-hair category, which now would have 150 members. And if the remaining 149 people finally grew hair, their movement into other categories would obviously increase at least one other category of 150 members. And if their shift into other categories were evenly distributed, 149 categories of 150 members would increase to 151 members each. In any case, there will always be 150 people with the same number of hairs on their head.

NOTE: If the numbers seem overwhelming, consider this: Assume that there are 100 students who have taken a test. Assume also that each student received a grade of A, B, C, D, F. Prove that at least twenty students must have the same grade.

EXPLANATION: With the most uneven distribution, each student would get the same grade. With the most even distribution, twenty students would get A; 20 B; 20, C; 20, D; 20, F. Moving away from the most even distribution, a student who shifts from, say, a grade of F decreases that category but must increase one of the other categories to twenty-one. No matter how the grades are shifted around, there must always be at least twenty students receiving the same grade.

E.

CONFLICT RESOLUTION EXERCISE: One-Person Game

Five suspected criminals meet secretly in the cellar of a building. Outside, a policeman with orders to follow the leader of the gang waits for them to disperse. The policeman knows that his man is the tallest of the group, and this is his sole means of distinguishing him from the rest. As a security measure, the men leave the meeting one at a time. The interval between successive departures is so long that if the policeman waits to see who leaves next before following any one of them, he will lose his opportunity.

(1) If the criminals leave the meeting in random order, what is the best strategy for the policeman?
(2) If the policeman adopts the best strategy, what is the probability that the person he follows will indeed be the leader?

F. CONFLICT RESOLUTION EXERCISE

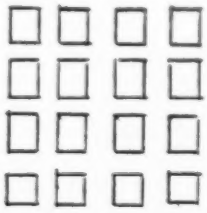
1. Circle either "heads" or "tails." If you and your partner circle the same word, you each get ten points.

heads tails

2. Circle one of the numbers listed in the line below. If you and your partner circle the same number, you each get ten points.

7 100 13 261 99 555

3. Put a check in one of the sixteen squares. If you and your partner check the same square, you each get ten points.



4. You are to meet your partner in New York City, but have not been instructed where to meet. You have no understanding on where to meet and can't communicate with each other. In the space below, write down where you will meet. If you both choose the same place, you each get ten points.

_____

5. You were told the date but not the hour of the meeting in No. 4; the two of you must guess the exact minute of the day for the meeting. If you both choose the same time, you each get ten points.

_____

6. In the space below, write some positive number. If you and your partner write the same number, you each get ten points.

_____

7. In the space below, write an amount of money. If you and your partner choose the same amount of money, you each get ten points.

_____

8. You have $100. You are to put some of that money into pile A, and the rest into pile B. If you and your partner put the same amount of money into pile A and into pile B, you each get ten points.

PILE A:_____PILE B:_____

MAXIMUM SCORE: 80 MY SCORE _____

G 1: CHARLIE, JACK, AND FRED (Norman Brand and John White, Legal Writing, New York: St. Martin's Press, 1976.)

Charlie was a local weight lifter and bully who liked to start fights. Although quite strong, he was extremely slow-moving and he limited his brawls to those who were considerably smaller than he.

Jack was a small, unathletic man who confined his exercise to daily jogging and attempts to stuff himself with enough food to boost his weight over 115 pounds. Unfortunately, he frequented the same bar as Charlie. One day while Jack was drinking a high-calorie banana daiquiri, Charlie lumbered over wearing a malicious grin. "You're next, Jackie-boy," he said. "Next time I see you, it's going to be all over."

Jack left immediately and thereafter began carrying a gun every time he left his house. Three nights later, while taking a shortcut through an alley, he saw a huge figure about thirty yards away lumbering slowly toward him. Since the figure was about the same size as Charlie, Jack became frightened, drew his gun, and fired. Then he ran home.

Jack's shot grazed Fred, a construction worker who was cutting through the alley on his way home. He now sues Jack for battery. What result?

Use these rules:
1. A person may use reasonable force to defend himself from an attack by another.
2. A person who uses excessive force in defending himself from another will be liable to that other person in battery.
3. A person who makes a reasonable mistake as to the need to defend himself or the amount of force needed will have his behavior judged in the light of the facts as he understood them to be.

G2--Resolution of the Case: Charlie, Jack, and Fred:

1. The issue is whether a battery occurred.
2. Battery is the intentional, unprivileged, unconsented, harmful or offensive touching of another.
3. In this case, the touching was intentional because Jack fired thinking he was defending himself from an attack by Charlie.
4. Moreover, the touching was unconsented because no exchange of words took place between Jack and Fred. To consent to an action means that a person has a good idea of what is going to happen. Fred literally did not know what hit him.
5. The touching was harmful in that the shot grazed Fred and might well have killed him had Jack been a better marksman.
6. However, was Jack privileged to touch Fred? Jack believed that he was going to be attacked by Charlie, who previously had threatened him.
7. Yet there was nothing in the facts given that suggests Jack's being attacked. We are told that Jack "saw a huge figure about thirty yards away lumbering slowly toward him." Nothing in this description indicates that an attack was about to take place.
8. Therefore, Jack was responding to a suspicion that he would be attacked, not to a recognition that he was being attacked.
9. In responding to this suspicion, Jack used excessive force. To shoot someone you <u>think</u> <u>may</u> attack you is unreasonable because the force is disproportionate to what is known.
10. Jack had alternatives to his use of unreasonable and excessive force. First he could have called out and asked the figure to identify himself. Secondly, even if Jack felt rather certain that the figure was Charlie, he knew that Charlie moved slowly (we are told that Charlie was "extremely slow-moving"), and we are told that Jack is a daily jogger. Probably, Jack could have run fast enough to avoid any attack by slow-moving Charlie.
11. Since Jack's use of force was unreasonable and excessive, he is liable to Fred for touching him in a harmful way.
12. At the same time, the question arises whether Jack's mistaking Fred for Charlie was a reasonable error. Both Fred and Charlie are big and move slowly. But this is simply not enough of a reason to assume that the person coming down the alley is Charlie. In addition, given that Jack's reaction in this case was to shoot the figure he thought was Charlie, Jack should have exercised much more care to insure that the figure was Charlie and that the figure was about to attack him.
13. Fred should have a good case against Jack and in all probability will win the case.

H: <u>MAIL SCHOOL INSTITUTE VS. KOPPELL</u> (Harry P. Kerr, <u>Opinion and Evidence</u>, New York: Harcourt, Brace, and World, 1962, 35.)

1. Ms. Koppell, an elementary school teacher, answered an advertisement of the Mail School Institute, asking for information regarding instruction in typing, stenography, and bookkeeping.

2. A few days later, a salesman from the Institute visited her.
3. He told her that the instruction would cost $350. She could complete assignments at her liesure and send them to the Institute for correction. She could then re-submit assignments that required extensive correction.
4. The salesman also indicated that the Institute guaranteed to find a full-time position for every student who completed the course.
5. The salesman spoke to Ms. Koppell for about an hour. She asked him to come back the next morning for her decision. She said that she was in the midst of completing a number of chores and needed time to think about spending $350 for the program described.
6. The salesman said that he understood her concern. However, he told her that if she waited another day, the price would go from $350 to $400.
7. After hearing this, Ms. Koppell signed the contract. She agreed to pay fifty dollars down and fifty dollars each month. She made out a check for fifty dollars to the Institute and gave it to the salesman.
8. After the salesman left, she thought about her decision. She then called her physician. After some discussion, her physician told her that she was physically unfit to take on the added work, given the strain she was under as an elementary school teacher.
9. Ms. Koppell called the salesman's office but was unable to contact him. The following morning she went to her bank account and withdrew what money she had in her checking account.
10. Later in the week, the salesman revisited Ms. Koppell and complained that her check had bounced.
11. She told him her decision and asked to be released from the contract.
12. He said that he was not in a position to release her from the contract and that she would have to negotiate a settlement with his company. He also expressed dismay that an elementary school teacher would use underhanded methods to undo a contract. He told her that she ought to be concerned about her professional reputation.
13. Within a week, Ms. Koppell received a twenty-four pound package from the Institute. She returned the package unopened.
14. The Institute sent Ms. Koppell a series of collection letters. She did not answer them.
15. Finally, the Institute informed Ms. Koppell that it was suing to collect the alleged debt.

QUESTION: SHOULD THE INSTITUTE COLLECT FROM MS. KOPPELL?